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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,875	03/25/2004	Michael Dlugoleski	1769082-0	5507

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EXAMINER

BENNETT, GEORGE B

ART UNIT PAPER NUMBER

2859

DATE MAILED: 12/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/807,875

Applicant(s)

DLUGOLESKI, MICHAEL

Examiner

G. Bradley Bennett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 4, 5 and 10-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4 and 5 refer back to previously claimed slotted assembly and securing means. However, these features were previously claimed in the alternative, and therefore have not definitely been set forth.

Claim 10: This claim is unclear because it sets forth "a jamb". However, a jamb according to the specification is the frame where a door, window, or similar opening appears. Furthermore, claim 14 sets forth that the "level" is for use with a jamb. Therefore, it appears that the jamb is not meant to be claimed in claim 10. Please clarify.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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3. Claims 1-4 and 6-9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Schaeffer et al..
4. Schaeffer et al. discloses the invention as claimed where : **1,6** are a horizontal component/connector which are first and second overlying members with an adjustor element with a member **12** that can be loosened for easterly/westerly adjustment ; **14** are vertical components that join to the horizontal component ; the device may be connected to a jamb, in which case it will square, level and plumb the jamb ; **12** can also be considered to be a handle, since the device can be gripped by this member ; **5, 20** are levels.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 10-13 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaeffer et al..
7. Schaeffer et al. discloses the invention substantially as claimed. However, Schaeffer et al. does not disclose the second level as claimed. Official Notice is taken that it is old and well-known to duplicate parts for a multiplied effect. Furthermore, the courts have held that it is obvious to duplicate parts for multiplied effect [see *St. Regis Paper Co. v. Bemis Co., Inc.*, 193 USPQ 8, 11 (7th

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Cir. 1977)]. Therefore, it would have been obvious at the time the invention was made for one of ordinary skill in the art to use a plurality of levels as taught by Schaeffer et al. in the manner claimed for the purpose of permitting a plurality of measurements to be made simultaneously.

8. Claims 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaeffer et al. in view of Hale et al. (US Pat. No. 6,615,500).

9. Schaeffer et al. discloses the invention substantially as claimed. However, Schaeffer et al. does not disclose attaching means for connecting the level to a wall or jamb. Hale et al. discloses how attaching means 82 can be used for attaching a level to a door jamb. Therefore, it would have been obvious at the time the invention was made for one of ordinary skill in the art to use attaching means as taught by Hale et al. in conjunction with the level taught by Schaeffer et al. for the purpose of attaching the Schaeffer et al. device to a jamb.


10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to G. Bradley Bennett whose telephone number is 571.272.2237. The examiner can normally be reached on M-TH 8:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on 571.272.2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


G. Bradley Bennett
Primary Examiner
Art Unit 2859

gbb
5 DEC 2004